

1 QUINN EMANUEL URQUHART &
2 SULLIVAN, LLP
3 Charles K. Verhoeven (Bar No. 170151)
charlesverhoeven@quinnemanuel.com
4 Melissa Baily (Bar No. 237649)
melissabaily@quinnemanuel.com
5 Lindsay Cooper (Bar No. 287125)
lindsaycooper@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

7 Attorneys for GOOGLE LLC

CLEMENT SETH ROBERTS (Bar No. 209203)
croberts@orrick.com
BAS DE BLANK (Bar No. 191487)
basdeblank@orrick.com
ALYSSA CARIDIS (Bar No. 260103)
acaridis@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759

COLE BRADLEY RICHTER (admitted *pro hac
vice*)
richter@ls3ip.com
LEE SULLIVAN SHEA & SMITH LLP
656 W Randolph St., Floor 5W
Chicago, IL 60661
Telephone: +1 312 754 0002
Facsimile: +1 312 754 0003

12 Attorneys for SONOS, INC.

13
14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA

17 GOOGLE LLC,

18 Plaintiff,

v.

19 SONOS, INC.,

20 Defendant.

Case No. 3:20-cv-06754-WHA

**STIPULATED ORDER RE:
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION**

JURY TRIAL DEMANDED

21 SONOS, INC.,

22 Plaintiff,

v.

23 GOOGLE LLC,

24 Defendant.

Case No. 4:21-cv-07559-WHA

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order streamlines Electronically Stored Information (“ESI”) production to promote
3 a “just, speedy, and inexpensive determination of this action, as required by Federal Rule of Civil
4 Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. The parties shall
6 jointly submit any proposed modifications within 30 days after the Federal Rule of Civil
7 Procedure 16 Conference.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency and
12 reduce costs will be considered in cost-shifting determinations.

13 5. The parties agree to comply with the District’s E-Discovery Guidelines (“Guidelines”)
14 and have employed the District’s Model Stipulated Order Re: the Discovery of Electronically
15 Stored Information and Checklist for Rule 26(f) Meet and Confer regarding Electronically Stored
16 Information.

17 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall
18 not include email or other forms of electronic correspondence (collectively “email”). To obtain
19 email parties must propound specific email production requests.

20 7. Email production requests shall be propounded for specific issues only, rather than
21 general discovery of a product or business.

22 8. Email production requests shall be phased to occur after the parties have exchanged
23 initial disclosures and basic documentation about the patents, the prior art, the accused
24 instrumentalities, and the relevant finances. While this provision does not require the production
25 of such information, the Court encourages prompt and early production of this information to
26 promote efficient and economical streamlining of the case.

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1 9. Email production requests shall identify the custodian, search terms, and time frame.
2 The parties shall cooperate to identify the proper custodians, proper search terms and proper
3 timeframe as set forth in the Guidelines.

4 10. Each requesting party shall limit its email production requests to a total of seven
5 custodians per producing party for all such requests. The parties may jointly agree to modify this
6 limit without the Court's leave. The Court shall consider contested requests for additional
7 custodians, upon showing a distinct need based on the size, complexity, and issues of this specific
8 case. Cost-shifting may be considered as part of any such request.

9 11. Each requesting party shall limit its email production requests to a total of five search
10 terms per custodian per party. The parties may jointly agree to modify this limit without the
11 Court's leave. The Court shall consider contested requests for additional search terms per
12 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific
13 case. The Court encourages the parties to confer on a process to test the efficacy of the search
14 terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such
15 as the producing company's name or its product name, are inappropriate unless combined with
16 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
17 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and
18 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
19 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
20 separate search term unless they are variants of the same word. Use of narrowing search criteria
21 (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when
22 determining whether to shift costs for disproportionate discovery. Should a party serve email
23 production requests with search terms beyond the limits agreed to by the parties or granted by the
24 Court pursuant to this paragraph, this shall be considered in determining whether any party shall
25 bear all reasonable costs caused by such additional discovery.

26 12. With respect to email production requests, pursuant to Paragraph 19 of the Court's
27 Supplemental Order to Order Setting Initial Case Management Conference in Civil Cases, the
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1 parties agree that the producing Party need only produce hits resulting from the agreed-on search
2 terms and agreed-on custodians.

3 13. Nothing in this Order prevents the parties from agreeing to use technology assisted
4 review and other techniques insofar as their use improves the efficacy of discovery.

5 14. Absent a showing of good cause, the following sources need not be searched for
6 documents and information responsive to the parties' discovery requests: automated disaster
7 recovery backup systems and/or disaster recovery backup tapes; RAM or temporary files;
8 temporary internet files, history, cache, cookies, and other on-line access data; data in metadata
9 fields that are updated automatically such as last-opened dates; data remaining from systems no
10 longer in use that is unintelligible on the systems in use; residual, fragmented, damaged,
11 permanently deleted, and unallocated data; legacy computer systems, audio files; video files;
12 server systems; network logs; personal digital assistants; mobile devices; cell phones; voicemails;
13 USB flash drives, or the like; portable disks; voicemail systems; and instant messaging
14 conversations (e.g., Skype, Slack, gChat, etc.).

15 15. Form of Production and Electronically Stored Information

16 The metadata fields listed below at paragraph 14n. shall generally be included in the
17 production of Electronically Stored Information ("ESI") if such fields exist and are reasonably
18 available to the producing Private Party. The following parameters shall apply to ESI production:

19 a) The general document image format of each electronic document produced shall be single-
20 page TIFF Group IV images, black and white, at 300 x 300 dpi resolution with a standard
21 delimited concordance format (DAT file) and either IPRO (LFP file) or Opticon (OPT file)
22 format, including document breaks and page counts. The producing Party may, at any time,
23 reproduce any document in color in JPG format or at a higher resolution. Documents
24 reproduced in color or at a higher resolution shall bear the same production number(s) as
25 the document originally produced document where practicable. A single multi-page text
26 file shall be provided for each document, and the filename should match its respective
27 TIFF image filename.

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1 b) Images shall be produced using a unique file name that will be the production number of
2 that page (e.g., ABC000001.TIF). The production number shall appear on the face of the
3 image.

4 c) Spreadsheets (e.g., MS Excel, Google Sheets) and delimited text files (e.g., comma-
5 separated value (.csv) files and tab-separated value (.tsv) files) shall be produced in either
6 their native file format or MS Excel. TIFF images need not be produced unless the files
7 have been redacted, in which instance such files shall be produced in TIFF with OCR Text
8 Files. If good cause exists to request production of files, other than those specifically set
9 forth above, in native format, the party may request such production and provide an
10 explanation of the need for native file review, which request shall not be unreasonably
11 denied. Any native files that are produced shall be produced with a link in the NativeLink
12 field, along with extracted text and applicable metadata fields. A TIFF placeholder
13 indicating that the document was provided in native format should accompany the database
14 records. If a file has been redacted, TIFF images and OCR text of the redacted document
15 will suffice in lieu of a native file and extracted text.

16 d) In addition, when possible native files shall be produced using a name that bears the
17 production number, for example: ABC000002.xls. The DAT file shall also include a path
18 to the native file.

19 e) Parent-child relationships (association between an attachment and its parent document)
20 shall be preserved to the extent such relationships are maintained in the normal course of
21 business in the source repository. The attachment(s) shall be produced adjacent to the
22 parent document in terms of production numbers, with the first attachment being named
23 with the next sequential number after the parent, and any additional attachment(s)
24 sequentially numbered after that first attachment. Any parent-child relationship will be
25 reflected in the DAT file.

26 f) Productions that contain foreign language documents shall be Unicode compliant.

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- 1 g) To the extent possible, the unitization of a produced electronically stored document and
- 2 any attachments or affixed notes shall be maintained as it existed in the original file or
- 3 computer. Scanned/paper documents should be logically unitized (i.e., to preserve page
- 4 breaks between documents and otherwise allow separate documents to be identified).
- 5 h) If unitization cannot be maintained, the original unitization shall be documented in the
- 6 associated load file or otherwise electronically tracked if possible.
- 7 i) A single multi-page text file shall be provided for each document, and the filename should
- 8 match its respective TIFF filename. A commercially-acceptable technology for optical
- 9 character recognition (“OCR”) shall be used for all scanned, hard copy documents written
- 10 in English or other Latin-character language. When possible, the text of native files should
- 11 be extracted directly from the native file. Text files will not contain the redacted portions
- 12 of the documents and OCR text files will be substituted instead of extracted text files for
- 13 redacted documents. All documents shall be produced with a link in the TextLink field.
- 14 j) The parties will use their best efforts to filter out common system files and application
- 15 executable files and scan document productions for viruses. Hash values that may be
- 16 filtered out during this process are located in the National Software Reference Library
- 17 (“NSRL”) NIST hash set list. Source code files will be provided according to the
- 18 Protective Order and not included in custodial data productions.
- 19 k) The parties are required to produce only a single copy of a responsive document and the
- 20 parties may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the
- 21 document level) across custodians, provided all custodians from whose files the document
- 22 was collected are identified in the ALL CUSTODIAN field (see below).
- 23 l) The parties are not required to preserve metadata fields that are frequently updated in the
- 24 ordinary course of business, such as last-opened dates.
- 25 m) The parties shall not be required to create any metadata for production (e.g., hash value or
- 26 other metadata not associated with ESI in the ordinary course of business) except that the
- 27 parties will create a field to indicate whether or not a document has been marked
- 28 confidential pursuant to the protective order (see below list of metadata fields). Any

1 document produced with a confidentiality designation on the produced image is to be
 2 afforded confidential treatment under the Protective Order regardless of whether there is an
 3 entry in this field.

4 n) The following metadata fields shall be included in the production of all ESI if such fields
 5 exist and are reasonably available to the producing Private Party:

Field Name	Field Description
BEGBATES	Number stamped on first image page of document
ENDBATES	Number stamped on last image page of document
BEGATTACH	Number stamped on first image page of attachment(s)
ENDATTACH	Number stamped on last image page of attachment(s)
CONF	Indicates whether a document has been designated as Confidential or Highly Confidential pursuant to the operative protective order.
ALL CUSTODIAN	Where applicable and available, identifies the individual (custodian) from whom the document originated (naming convention: last name, first name) and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
FROM	Email author
TO	Email addressee(s)
CC	Email copyee(s)
BCC	Email blind copyee(s)
SUBJECT	Email subject line
DATE_SENT	Email date sent
TIME_SENT	Email time sent
DATE_RECEIVED	Email date received
TIME_RECEIVED	Email time received
EMAILFOLDER	Email folder path

1	AUTHOR	Document author
2	TITLE	Document title
3	DATECREATED	Document create date
4	TIMECREATED	Document create time
5	Field Name	Field Description
6	DATELASTMOD	Document last modified date
7	TIMELASTMOD	Document last modified time
8	FILENAME	File name of an electronic document or attachment
9	FILEPATH	File path of an electronic document or attachment
10	FILESIZE	File size of an electronic document or attachment
11	FILE_EXTENSION	File extension of an electronic document or attachment
12	MD5HASH	Fingerprint signature of an electronic document or attachment
13	NATIVEFILELINK	For documents produced as native file, link to that file
14	TEXTFILELINK	Link to text file produced with document or attachment

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19 All documents shall be produced in their original language. Where a document responsive
20 to a discovery request exists in a foreign language and an English-language version of that
21 document exists in the producing party's possession, custody or control, the producing party shall
22 produce both the original document and all pre-existing English-language versions.

23 Bates numbering and confidentiality designations shall not obscure any text or image in a
24 document.

25 The parties also shall, upon reasonable request, produce a higher-resolution or color image
26 of a document. The producing Private Party shall have the option of producing the native-file
27 version of the documents in response to such requests.

If a party prints (whether in hard copy or to a .pdf or other electronic image) documents, or portions thereof, that are produced in native format, the party shall mark any such printout with a footer containing (1) the document's Bates number, and (2) any confidentiality designation assigned by the producing party to the document.

The parties may use encryption software, such as Accellion, kiteworks, WinZip, or PointSec, to protect any documents or materials produced on physical media.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 1, 2022

/s/ Lindsay Cooper
Attorneys for Google LLC

DATED: February 1, 2022

/s/ Cole B. Richter
Attorneys for Sonos, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 2, 2022

The Honorable William Alsup
United States District Court Judge

1 **ECF ATTESTATION**

2 I, Lindsay Cooper, am the ECF User whose ID and password are being used to file this
3 Joint Letter for Discovery Relief. In compliance with General Order 45, X.B., I hereby attest that
4 Cole B. Richter, counsel for Sonos, has concurred in this filing.

5 Dated: February 1, 2022

Lindsay Cooper
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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7 By: /s/ Lindsay Cooper
Lindsay Cooper

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